

California Regional Water Quality Control Board  
Santa Ana Region

Order No. R8-2007-0019

Waste Discharge Requirements

for

North Peak Land Company, LLC  
North Peak Specific Plan (Tract Map No. 35123), City of Lake Elsinore

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. On August 11, 1998, a Waiver of Waste Discharge Requirements and Water Quality Certification (Waiver) was issued to TMC Companies for the proposed North Peak Development Project in the City of Lake Elsinore. The Waiver was issued in accordance with Board Resolution No. 96-9, "Waiver of Waste Discharge Requirements for Specific Types of Discharges" (Resolution No. 96-9). Resolution No. 96-9 allowed, in part, that "waste discharge requirements for a specific discharge shall be considered waived only after a Report of Waste Discharge is submitted and the Executive Officer concurs that the conditions specified in Attachment 'A' for the specific type of discharge will be met."
2. California Water Code (CWC) Section 13269(b)(1) states "a waiver in effect on January 1, 2000, shall remain valid until January 1, 2003, unless the regional board terminates that waiver prior to that date. All waivers that were valid on January 1, 2000, and granted an extension until January 1, 2003, and not otherwise terminated, may be renewed by a regional board in five-year increments". The Board has not extended or renewed Resolution No. 96-9. Consequently, the August 11, 1998 Waiver for the North Peak Development Project would have expired on August 12, 2003. But since the 1998 Waiver was in effect on January 1, 2000, CWC Section 13269(b)(1) effectively terminated that waiver on January 1, 2003. Therefore, the August 11, 1998 Waiver is no longer valid pursuant to Porter-Cologne and TMC Companies is no longer authorized by the Board to discharge dredge or fill material into waters of the State.
3. On March 15, 2006, Board staff received a letter from North Peak Land Company, LLC (NPLC), dated December 9, 2005. In that letter, NPLC requested that the August 11, 1998 Waiver be formally acknowledged as being transferred to them and that the Board amend the Waiver to reflect NPLC as its recipient. Board staff informed NPLC that the Waiver was no longer valid and that individual Waste Discharge Requirements would be necessary to re-authorize the

proposed discharges of fill to waters of the State. Consequently, NPLC submitted a Report of Waste Discharge on May 24, 2006.

4. NPLC (hereinafter, discharger) proposes to develop the North Peak Specific Plan, a 1,779-acre planning area consisting of a 773-acre conservation bank, 560 acres of residential development, and two golf courses in the City of Lake Elsinore. Tract Map No. 35123 consists of the southern, Phase 1 portion of the Specific Plan. The project includes the extension of Nichols Road. The site is located within Sections 20 and 29, Township 5 South, Range 4 West, shown on the U.S. Geological Service *Lake Elsinore, California* quadrangle (33.70237 degrees North/-117.32378 degrees West).
5. Within the North Peak Specific Plan are 34 ephemeral and intermittent drainages consisting of 3.64 acres of waters of the U.S. Permanent impacts to U.S. Army Corps of Engineers (Corps) jurisdictional waters total 2.05 acres of drainages, including 0.25 acres of wetlands. The remaining acreage of waters of the U.S. will be avoided.
6. The discharger has committed to mitigate direct impacts to waters of the U.S. according to the Final Mitigation Plan prepared by TMC Companies and dated December 1998. Implementation of the Final Mitigation Plan includes the construction of six lakes with open water, freshwater emergent marsh, submerged aquatic vegetation, and tributary riparian scrub/forest drainages. The lakes/drainages will provide a total of 11.3 acres of varying habitat types that includes 1-acre of wetlands.
7. In compliance with the California Environmental Quality Act (CEQA), the City of Lake Elsinore certified an Environmental Impact Report (EIR) for the North Peak Specific Plan on February 12, 1991. Since then, the City approved an amendment to the Specific Plan on April 13, 1999 based upon another EIR approved on March 23, 1999. The waste discharge requirements proposed herein addresses the fill of 2.05 acres of waters of the U.S.
8. In the event that any of the waters previously identified as being subject to the jurisdiction of the Corps are subsequently determined to be outside of the Corps jurisdiction, this Order will continue to authorize discharges of fill to those waters pursuant to the California Water Code.
9. The Board has considered antidegradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.
10. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.

11. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

**IT IS HEREBY ORDERED** that the discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

**A. DISCHARGE SPECIFICATIONS:**

1. No activities associated with the project shall cause or threaten to cause a nuisance or pollution as defined in Section 13050 of the California Water Code.
2. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.
3. The groundwater in the vicinity of the project shall not be degraded as a result of the project activities or placement of fill for the project.
4. The discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.

**B. DISCHARGE PROHIBITIONS:**


1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, except as authorized by this Order, is prohibited.
2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by a separate National Pollutant Elimination System (NPDES) permit, is prohibited.

**C. PROVISIONS:**

1. The discharger shall fully implement the Final Mitigation Plan, dated December 1998, for the purpose of creating waters of the U.S. as described therein.
2. 45-days prior to any discharge of fill to waters of the U.S. or waters of the State, the discharger shall prepare and submit a detailed time schedule, acceptable to the Executive Officer, for the implementation of the Final Mitigation Plan as required by this Order. The time schedule shall describe how each of the waters of the U.S. will be constructed relative to the development of the North Peak Specific Plan. The time schedule shall be accompanied by a site plan identifying the location of each of the corresponding waters. The discharger shall implement the Final Mitigation Plan according to the time schedule upon approval by the Executive Officer.
3. The discharger shall maintain a copy of this Order, the Final Mitigation Plan, and approved time schedule and site plan at the site so that they are available to site operating personnel at all times. Key operating personnel shall be familiar with its content.
4. The discharger shall remove from the site any waste or fill material found to contain substances that may have a deleterious effect on water quality, including trash and debris, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.
5. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code and may constitute a violation of the CWA and its regulations, and is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order; or a combination thereof.
6. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.
7. The provisions of this Order are severable, and if any provision of this Order, or the application of any provisions of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order shall not be affected thereby.
8. The filing of a request by the discharger for modification, revocation and re-issuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.

9. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from liabilities under federal, state, or local laws, nor guarantee the discharger a capacity right in the receiving waters.
10. This Order does not convey any property rights of any sort, or any exclusive privilege.
11. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.
12. In the event of any change in control or ownership of land or waste discharge facility presently owned or controlled by the discharger, the discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Board.
13. The Board and other authorized representatives shall be allowed:
  - a. Entry upon premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;
  - b. Access to copy any records that are kept under the requirements of this Order;
  - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
  - d. To photograph, sample and monitor for the purpose of assuring compliance with this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on February 2, 2007.

  
Gerard J. Thibeault  
Executive Officer

**California Regional Water Quality Control Board  
Santa Ana Region**

**February 2, 2007**

**ITEM:** 9

**SUBJECT:** Order No. R8-2007-0019, North Peak Land Company, LLC, North Peak Specific Plan (Tract Map No. 35123), City of Lake Elsinore

**SUMMARY**

The matter before the Board is to consider adoption of Order No. R8-2007-0019, authorizing the discharge of fill to waters of the U.S. that was previously authorized under a now-expired waiver of waste discharge requirements.

**BACKGROUND**

On August 11, 1998, the Executive Officer issued a Waiver of Waste Discharge Requirements and Water Quality Certification (Waiver) to TMC Companies for the proposed North Peak Development Project in the City of Lake Elsinore. The Waiver was issued in accordance with Regional Board Resolution No. 96-9, "Waiver of Waste Discharge Requirements for Specific Types of Discharges" which allowed, in part, that "waste discharge requirements for a specific discharge shall be considered waived only after a Report of Waste Discharge is submitted and the Executive Officer concurs that the conditions specified in Attachment 'A' for the specific type of discharge will be met." Attachment 'A' includes several conditions to protect water quality, including assurances of no net loss of wetlands, use of inert fill material, and prohibiting certain activities in waters. A Report of Waste Discharge was submitted by TMC Companies on June 11, 1998.

The North Peak Development Project, as described in the August 11, 1998 Waiver, consists of the "development of residential and commercial areas, two golf courses, and establishment of a Conservation Bank. Improvements to Nichols Road will also be required to implement the City's General Plan Circulation Easement [*sic*] to provide safe and efficient traffic flow for North Peak's proposed residents." According to the June 11, 1998 Report of Waste Discharge, the total project area is 1,779 acres and consists of a 773 acre conservation bank, 560 acres of residential development, two golf courses, and commercial development. The project site encompasses 34 un-named ephemeral and intermittent drainages, tributary to Wasson Canyon Creek, generally located along the site's east side, and Arroyo Del Toro Creek located to the southwest.

The August 11, 1998 Waiver authorized the permanent discharge of fill to 0.25 acres of wetland, 3.49 acres of riparian drainages, and 1.98 acres of streambed. According to the June 10, 1998 Report of Waste Discharge, 2.05 acres of waters of the U.S., inclusive of 0.25 acres of wetland, are proposed to be filled – suggestive of a discrepancy between the Waiver and the Report of Waste Discharge. Regional

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**STAFF REPORT (AMENDED)**

Board staff has concluded that the 3.49 acres of riparian drainages authorized for fill in the August 11, 1998 Waiver includes areas subject to the jurisdiction of the Department of Fish and Game, which are greater than the aerial extent of the waters of the U.S.

On March 15, 2006, Regional Board staff received a letter from North Peak Land Company, LLC (NPLC), dated December 9, 2005. In that letter, NPLC requested that the August 11, 1998 Waiver be formally acknowledged as being transferred to them and that the Regional Board amend the Waiver to reflect NPLC as its recipient.

The August 11, 1998 Waiver represents two parallel but separate actions by the Regional Board. First, the Waiver waived waste discharge requirements pursuant to the State's Porter-Cologne Water Quality Control Act (California Water Code Section 13000 *et seq.*). Second, the Waiver waived Water Quality Standards Certification pursuant to Clean Water Act (CWA) Section 401. California Water Code (CWC) Section 13269(b)(1) states "a waiver in effect on January 1, 2000, shall remain valid until January 1, 2003, unless the regional board terminates that waiver prior to that date. All waivers that were valid on January 1, 2000, and granted an extension until January 1, 2003, and not otherwise terminated, may be renewed by a regional board in five-year increments". The Regional Board has not extended or renewed Resolution No. 96-9. In addition, since the 1998 Waiver was in effect on January 1, 2000, CWC Section 13269(b)(1) effectively terminated that waiver on January 1, 2003. Therefore, the August 11, 1998 Waiver is no longer valid pursuant to Porter-Cologne, and Regional Board staff was unable to satisfy NPLC's request. TMC Companies is no longer authorized by the Regional Board to discharge dredge or fill material into waters of the State.

On March 16, 2006, Regional Board staff contacted U.S. Army Corps of Engineers (Corps) staff concerning this matter, and learned that the Corps still recognizes the validity of the August 11, 1998 Waiver of Certification under CWA Section 401 for the purposes of the Corps' individual CWA Section 404 permit issued for the Project. As a result, the Regional Board would not have the opportunity to re-authorize discharges of fill to waters of the State through a Certification issued pursuant to State Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification". Based on this information, Regional Board staff determined that individual waste discharge requirements would be necessary to authorize discharges of dredge and fill associated with the project to waters of the State. Regional Board staff informed NPLC of their conclusion in a letter dated April 3, 2006. Subsequently, NPLC submitted a Report of Waste Discharge on May 24, 2006.

Pursuant to the California Environmental Quality Act (CEQA), the August 11, 1998 Waiver was issued based upon an Environmental Impact Report (EIR) for the North Peak Specific Plan certified by the City of Lake Elsinore on February 12, 1991. Since then, the City approved an amendment to the Specific Plan on April 13, 1999 based upon another EIR approved on March 23, 1999. The City is in receipt of an application for a tract map as part of the Specific Plan (Tract Map No. 35123) and City staff has indicated that no further CEQA analysis will be prepared. Tract Map